



**Billing Code: 4310-55**

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

**[FWS-R2-ES-2012-N271]**

**[FXES11120200000F2-134-FF02ENEH00]**

### **Notice of Intent to Prepare a Draft Environmental Impact Statement for a General Conservation Plan for the American Burying Beetle for Pipelines and Well Field Development in Oklahoma and Texas**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent; announcement of meetings; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), advise the public that we intend to prepare a draft environmental impact statement (EIS) to evaluate the impacts of, and alternatives to, the proposed General Conservation Plan (GCP) for incidental take of the federally listed American burying beetle (ABB) resulting from activities associated with construction, maintenance, operation, and repair of oil and gas pipelines, and related well field activities. Individual oil and gas companies would apply for an Endangered

Species Act 10(a)(1)(B) permit and agree to implement the approved GCP. A GCP is a conservation plan suitable for the needs of a local area where the NEPA requirements and permit issuance criteria are met. After approval of the GCP, individuals apply for a permit for incidental take associated with activities covered in the GCP and agree to comply with the terms and conditions of the GCP. We notice these permit applications and request comments from the public.

**DATES:** In order to be included in the analysis, all comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. We will hold two public scoping meetings within the 43-county proposed covered area within the ABB's range. Exact meeting locations and times will be noticed in local newspapers and at the Oklahoma Ecological Services Office website, <http://www.fws.gov/southwest/es/Oklahoma/>, at least 2 weeks prior to each event.

**ADDRESSES:** Please provide comments in writing, by one of the following methods:

*Email:* **ABB\_GCP@fws.gov**; or

*U.S. mail:* Field Supervisor, Oklahoma Ecological Services Field Office, U.S. Fish and Wildlife Service, 9014 E. 21st St., Tulsa, OK 74129.

Please specify that your information request or comments concerns the Oil and Gas draft EIS/GCP.

**FOR FURTHER INFORMATION CONTACT:** Dr. Dixie Porter, by U.S. mail at the U.S. Fish and Wildlife Service, Oklahoma Ecological Services Field Office, 9014 E. 21st St., Tulsa, OK 74129, or by phone at 918-581-7458.

**SUPPLEMENTARY INFORMATION:** We publish this notice in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6, and section 10(c) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). We intend to gather the information necessary to prepare an EIS to evaluate the impacts of, and alternatives to, the proposed issuance of incidental take permits under the Act to applicants who agree to implement the GCP, which is also under development. The proposed GCP is a habitat conservation plan that will cover take of the ABB that is incidental to activities associated with the construction, operation, maintenance, and repair of oil and gas pipelines and related well field activities, and will include measures necessary to minimize and mitigate impacts to covered species and their habitats to the maximum extent practicable. All NEPA requirements and permit issuance criteria will be met up front; then, after approval of the GCP, companies will apply for an incidental take permit pursuant to the GCP.

## **Background**

Section 9 of the Act prohibits “taking” of fish and wildlife species listed as endangered under section 4 of the Act. The Act’s implementing regulations extend, under certain circumstances, the prohibition of take to threatened species. Under section

3 of the Act, the term “take” means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” The term “harm” is defined by regulation as “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering” (50 CFR 17.3). The term “harass” is defined in the regulations as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering” (50 CFR 17.3).

Under Section 10(a)(1)(B), the Secretary of the Interior may authorize the taking of federally listed species if such taking occurs incidental to otherwise legal activities and where a conservation plan has been developed that describes: (1) the impact that will result from such taking; (2) the steps an applicant will take to minimize and mitigate that take to the maximum extent practicable, and the funding that will be available to implement such steps; (3) the alternative actions to such taking that an applicant considered and the reasons why such alternatives are not being utilized; and (4) other measures that the Service may require as being necessary or appropriate for the purposes of the plan. Issuance criteria for an incidental take permit requires the Service to find that: (1) the taking will be incidental to otherwise lawful activities; (2) an applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3) an applicant has ensured that adequate funding for the plan will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the

species in the wild; and (5) the measures, if any, we require as necessary or appropriate for the purposes of the plan will be met. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

We expect applicants to request permit coverage for a period of 20 years.

### **Public Scoping**

A primary purpose of the scoping process is to receive suggestions and information on the scope of issues and alternatives to consider when drafting the EIS, and to identify, rather than debate, significant issues related to the proposed action. In order to ensure that we identify a range of issues and alternatives related to the proposed action, we invite comments and suggestions from all interested parties. We will conduct a review of this project according to the requirements of NEPA and its regulations, other relevant Federal laws, regulations, policies, and guidance, and our procedures for compliance with applicable regulations.

We will hold two public scoping meetings: one in Tulsa, at the Oklahoma State University Tulsa Campus, and one in McAlester, Oklahoma. We will provide notices in local newspapers and on the Oklahoma Ecological Services Office website, <http://www.fws.gov/southwest/es/Oklahoma/>, with dates, times, and specific locations at least 2 weeks prior to each event. Persons needing reasonable accommodations in order to attend and participate in a public meeting should contact us at the address listed in the ADDRESSES section no later than 1 week before the relevant public meeting. Information regarding this proposed action is available in alternative formats upon request.

We will accept oral and written comments at each meeting. You may also submit written comments to the Field Supervisor at the e-mail or U.S. mail addresses in the ADDRESSES section, above. Once the draft EIS and draft GCP are completed, there will be further opportunities for public comment on the content of these documents through additional public meetings and a 90-day public comment period.

## **Alternatives**

The proposed action presented in the draft EIS will be compared to the No-Action alternative. The No-Action alternative represents estimated future conditions without the application for, or issuance of, an incidental take permit. No-Action represents the status quo.

### **No-Action Alternative**

Under the no-action alternative, described operators would comply with the Act by avoiding impacts (take) to the ABB where practicable. If take cannot be avoided and there is Federal involvement in the project (for example a Federal permit such as a Corps of Engineers 404 Clean Water Act permit, authorization, or funding exists) an operator or individual may receive take coverage through a biological opinion issued by the Service to the Federal action agency. If there is no Federal involvement in the project operators or individuals can apply for an incidental take permit from the Service. This approach is more time-consuming and less efficient because permits would need to be considered and processed one project at a time. This can result in an isolated independent mitigation approach.

## **Proposed Alternative**

The proposed action is issuance of an incidental take permit for the covered species during construction, operation, and/or maintenance of pipelines or other well field development-related activities. The proposed GCP, which must meet the requirements in section 10(a)(2)(A) of the Act, would be developed in coordination with the Service and implemented by an applicant. This alternative will allow for a comprehensive mitigation approach for authorized impacts and result in a more efficient and timely permit processing effort for the Service and the applicants. Actions covered under the requested incidental take permit may include possible take of covered species associated with activities including, but not limited to, construction, operation, maintenance, repair to pipelines or other well field development related activities.

Forty-three counties are in the proposed permit area, including Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Cleveland, Coal, Craig, Creek, Delaware, Garfield, Garvin, Haskell, Hughes, Johnston, Latimer, Le Flore, Love, Major, Marshall, Mayes, McClain, McCurtain, McIntosh, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Rogers, Seminole, Sequoyah, Tulsa, Wagoner, and Washington counties in Oklahoma and Lamar and Red River counties in Texas. The species covered under the requested incidental take permit is the ABB. We will be evaluating whether the covered activities will impact other species and whether they should be included on the permit or if management practices can be implemented that are sufficient to avoid take. These species and their legal status include:

- American alligator (*Alligator mississippiensis*) – Threatened (Similarity of Appearance)
- Arkansas darter (*Etheostoma cragini*) – Candidate
- Arkansas River shiner (*Notropis girardi*) – Threatened, Arkansas R. Basin population, with Critical Habitat
- Black-Capped Vireo (*Vireo atricapilla*) – Endangered
- Gray bat (*Myotis grisescens*) – Endangered
- harperella (*Ptilimnium nodosum*) – Endangered
- Indiana bat (*Myotis sodalis*) – Endangered
- Least tern (*Sterna antillarum*) – Endangered, interior population
- Leopard darter (*Percina pantherina*) – Threatened with Critical Habitat
- Neosho madtom (*Noturus placidus*) – Threatened
- Neosho Mucket (*Lampsilis rafinesqueana*) – Proposed Endangered
- Ouachita Rock pocketbook (*Arkansia wheeleri*) – Endangered
- Ozark Big-Eared bat (*Corynorhinus townsendii ingens*) – Endangered
- Ozark cavefish (*Amblyopsis rosae*) – Threatened
- Piping Plover (*Charadrius melodus*) – Threatened, except Great Lakes watershed population
- rabbitsfoot (*Quadrula cylindrica* ssp. *cylindrica*) – Proposed Threatened
- Red-Cockaded woodpecker (*Picoides borealis*) – Endangered
- Scaleshell mussel (*Leptodea leptodon*) – Endangered
- Sprague's Pipit (*Anthus spragueii*) – Candidate



- Whooping crane (*Grus americana*) – Endangered, except in the experimental population area
- Winged Mapleleaf (*Quadrula fragosa*) – Endangered; except where listed as experimental populations

We do not anticipate that covered activities will result in take of these species, but we seek comments to help inform our evaluation.

We will also evaluate whether covered activities are likely to impact the unlisted bald eagle (*Haliaeetus leucocephalus*), which is protected under the *Bald and Golden Eagle Protection Act*.

### **Other Alternatives**

We seek information regarding other reasonable alternatives during this scoping period and will evaluate the impacts associated with such alternatives in the draft EIS.

### **Public Availability of Comments**

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## **Environmental Analysis**

The Service will conduct an analysis of the impacts to the ABB and its habitat, and other resources such as vegetation, wetlands, wildlife, geology and soils, air quality, water resources, water quality, cultural resources, land use, recreation, water use, local economy, climate change, and environmental justice resulting from the proposed GCP and other alternatives considered. Following completion of the analysis, the Service will publish a notice of availability and a request for comments on the draft EIS and the draft GCP. The draft EIS and draft GCP are expected to be completed and available to the public in January or February, 2013.

Date: December 17, 2012

Joy E. Nicholopoulos, Acting  
Regional Director, Southwest Region,  
Fish and Wildlife Service

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